Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of	)	
	)	**WC Docket No. 04-36**
IP-Enabled Services	)	
	)	

COMMENTS OF THE NEW JERSEY BOARD OF PUBLIC UTILITIES

I. Introduction

The New Jersey Board of Public Utilities ("Board") submits the following comments in response to the Federal Communications Commission's ("FCC" or "Commission") Notice of Proposed Rulemaking ("NPRM") issued in the above referenced docket on March 10, 2004. In its NPRM, the FCC initiated a proceeding to examine issues related to services and applications making use of Internet Protocol ("IP"), or "IP-enabled services." These services include, but are not limited to Voice over IP ("VoIP") services, other communications capabilities utilizing the IP, software-based applications that facilitate the use of those services, and future IP-enabled services expected to emerge in the market.[1] The FCC seeks comments on the impact that IP-enabled services continue to have on the United States' communications landscape.

As customers begin to substitute IP-enabled services for traditional communications, the FCC seeks comment as to the rate and extent of that

[1] NPRM at ¶ 1.

substitution. Further, comments are requested on IP-enabled services presently available, expected future development of such services, how to distinguish among such services, and what regulatory requirements, if any, should apply to IP-enabled services. The NPRM seeks comment on ways in which the Commission might categorize IP-enabled services to ensure that any regulations applied are limited to those services and/or applications for which they are most appropriate. In particular, comments are requested on whether the services comprising each category constitute “telecommunications services" or “information services" under the definitions set forth in the Act. Noting the importance of these legal classifications, as well as the Commission's statutory forbearance authority and Title 1 ancillary jurisdiction, the NPRM describes several central regulatory requirements and asks which, if any, should apply to each category of IP-enabled service. These regulatory requirements include, among others, those addressing requirements under the Communications Assistance for Law Enforcement Act (“CALEA”), disability accessibility, the 911 and E911 systems, access charges, universal service, consumer protection, and traditional common carrier obligations.

The Board commends the FCC for bringing such important issues to the forefront and urges that it continue to keep abreast of the swiftly moving landscape of the telecommunications frontier. The guidance that is expected to be provided from the FCC at the conclusion of this proceeding is expected to greatly aid state utility regulators in making important policy decisions that will permit customers to enjoy greater choice, with more options based on reliability,

quality and price. The Board's comments will address only two areas of the NPRM: 1) regulatory classification of IP-enabled services; and 2) the application of the traditional regulatory requirements upon IP-enabled services. The Board submits that despite the ultimate regulatory classification of IP-enabled services that is reached by the FCC, state regulators must be permitted the flexibility to address the individual needs of their states. Additionally, the FCC must address the many regulatory problems that are present today before many IP-enabled services, such as VoIP, should obtain widespread deployment.

II. Regulatory Classification

As recognized by the FCC, the increase in the level at which customers are beginning to substitute IP-enabled services for traditional wireline services warrants the type of inquiry undertaken in the NPRM. Although the increased choice that the development of IP-enabled services such as VoIP affords consumers is laudable, the fact remains that these gains must be considered along with the administrative and technical differences between IP-services and traditional telephony. These new choices should not erode or erase the relevance of aspects of the existing regulatory framework, including those provisions designed to ensure disability access, consumer protection, emergency 911 service, law enforcement access for authorized wiretapping purposes, consumer privacy, and others.

The Board notes that a paramount concern with whatever regulatory classification the FCC decides to place upon IP-enabled services is that states

retain the level of flexibility needed to address state-specific conditions. Any revisions contemplated by the FCC should consider whether they provide states with the flexibility to address local concerns.

III. Regulatory Requirements

The FCC also seeks comment on whether certain regulatory requirements that currently apply to traditional wireline services should be extended to IP-enabled services, and in what capacity. Although the Board is concerned about unhampered development of IP-enabled services, it is imperative that the FCC address these several crucial –and at times troubling- regulatory gaps before widespread deployment of these services can occur. The importance of resolving the social, legal and technical issues that revolve around CALEA requirements, 911 access, reliability, disability accessibility, universal service, carrier compensation, area code exhaustion, and customer service, cannot be overstated. Each of these matters will greatly impact the ability of the state regulators to continue to ensure the provision of safe, adequate, and proper service while we continue to encourage the deployment and development of these advanced services.

A. CALEA Requirements

Anything involving the security of our nation is inherently a thorny issue for the FCC to wrestle with in this age of heightened security. The use of certain IP-enabled services as a terrorist tool presents a crucial issue that must be dealt

with swiftly. The FCC properly acknowledges in its NPRM the importance of ensuring that the needs of law enforcement are met.[2] The Board must strongly emphasize the importance of ensuring that law enforcement continues to have the tools necessary to fight our current war on terror today. With the World Trade Center tragedy having occurred just across the river from us, this Board is highly sensitive to the changes that have occurred in our society and the role which we must play to ensure that our utilities are properly safeguarded.[3] It is imperative that the FCC properly balance the goals of facilitating the deployment of broadband services against the needs of those responsible for protecting our country from terrorist actions to effectively perform those duties. The Board commends the FCC for its swift action in initiating a CALEA rulemaking proceeding at the same time as this NPRM was issued to address the technical issues associated with law-enforcement access to IP-enabled services, including the scope of covered services, assignment of responsibility for compliance, and identifying wiretap capabilities required.[4] We urge the FCC to swiftly resolve these issues to provide the protections needed.

B. 911 Emergency Services

The FCC seeks comments on the current capabilities of VoIP services to deliver traditional call-back and location information. The FCC has previously

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[2] NPRM at n.158.

[3] The Board took several actions following the World Trade Center tragedy to ensure that safe, adequate and proper service was afforded to New Jersey residents, including requiring a moratorium on shutoffs for persons affected by the attacks, and communicating with the utilities to ensure they were taking appropriate steps to protect their facilities against terrorist attacks.

[4] Public Notice, *Comment Sought on CALEA Petition for Rulemaking*, Federal Communications Commission, RM-10865 (March 12, 2004).

addressed these issues with respect to wireless telephony, and found it to be so necessary as to require wireless providers to be able to provide such information for the 911 systems to locate wireless callers.

As VoIP availability continues to increase its reach throughout the country, various providers are venturing into this new medium.[5] VoIP providers do not fit the traditional categories used for differentiating between traditional telephony providers. As noted in the FCC's NPRM, VoIP providers include traditional local exchange carriers, traditional long distance carriers, and the newest entrants in the telephony arena, cable telephony providers and IP service providers. However, the wide dichotomy between carriers creates issues for the FCC to address regarding the best way to gain the benefits of the 911 emergency services system while retaining the new choices offered to customers by VoIP providers. For example, as the FCC notes in the NPRM, while Vonage provides traditional telephone numbers to its IP telephony customers, the telephone number associated with the Vonage customer is not tied to the customer's physical location; rather, the telephone number is mapped to the digital signal processor contained in the customer's computer, enabling Vonage to identify and serve that customer over any Internet connection.[6] Although Vonage's services provide customers with mobility, permitting them to make VoIP calls anywhere where there is an Internet connection, they will likely present the same types of 911 access issues once presented by wireless calls.

[5] NPRM at n.39, ¶ ¶ 12-14.
[6] NPRM at ¶ 15, n.59.

The FCC also seeks comment on the potential applicability of 911, E911 and related critical infrastructure regulation to VoIP and other IP-enabled services.[7] It is no coincidence that VoIP services are enjoying the same type of growth levels as seen in wireless service over the last several years. With this increase in wireless usage, the FCC saw the need to extend 911 and E911 requirements to wireless carriers. The same type of analysis must take place for the FCC to carefully consider the necessity of requiring VoIP providers to meet the same 911 and E911 requirements as required of wireless carriers today. The FCC has correctly requested that the industry providers submit information to the FCC on the ability of VoIP services to provide 911 services. If the industry properly meets this charge, then the FCC should be equipped with the information needed to establish the best way to ensure 911 availability for VoIP consumers.

The need to expedite this analysis is clear – providing 911 availability can only enhance VoIP service and broadband deployment in general. But while the necessary analysis is being conducted, the FCC should require, at a minimum, that VoIP providers ensure that customers are provided clear and conspicuous notice of any inability to access 911 services. The traditional expectations of both wireline and wireless customers to be able to contact 911 in case of an emergency must be acknowledged in the consumers' ability to make an informed choice as to their use of IP-enabled services which may not provide them with the access to emergency services to which they have become accustomed. The type of voluntary agreement between the two industry groups, National Emergency Number Association ("NENA") and Voice on the Net ("VON"),

[7] NPRM at ¶ 53.

referenced in the NPRM provides an example of the type of collaborations that should be encouraged to ensure proper customer notification and furtherance of the efforts to provide 911 availability for VoIP customers.[8]

C. Disability Access

The NPRM invites comment regarding how the FCC's requirements concerning the accessibility of communications equipment and services to the disabled should be applied in the context of IP-enabled services. As acknowledged by the FCC, the advent of IP-enabled services has expanded choice in the area of the provision of telecommunications services to persons with a hearing or speech disability. In just a few years, service opportunities have expanded from the traditional Telecommunications Relay Service ("TRS") using a teletypewriter ("TTY") to now include two IP-enabled services, IP Relay and Video Relay Service.[9] To the extent that IP-enabled services will significantly contribute to leveling the playing field for telecommunications services for those with disabilities, the Board recommends that they should be strongly encouraged by the FCC. However, the need to ensure access to telecommunications services for those with disabilities should not be overshadowed by the quest to enhance broadband deployment. The information derived from the industry responses to the NPRM should allow the FCC to explore the feasibility of expanding the FCC's requirements to ensure the use of communications

[8] NPRM at ¶ 56, n.168.
[9] NPRM at ¶ 59.

equipment associated with IP-enabled services, such as VoIP, are accessible by persons with disabilities.

D. Carrier Compensation

The NPRM seeks comment on the extent to which access charges should apply to VoIP or other IP-enabled services. Under the FCC's rules, access charges have been assessed against carriers that use the public switched telephone network ("PSTN") to provide telephony services. The emergence of IP-enabled services, particularly VoIP, which, in some instances, do not originate or terminate calls on the PSTN, has placed tremendous stress on the traditional inter-carrier compensation system. In addition, the current system suffers from various inconsistencies which have resulted in alleged discriminatory practices and arbitrage or "gaming" of the system. It is likely that traditional carriers will apply pressure on FCC and Congress to create policies that will compel the VoIP service providers to contribute in some manner, to ensure an even playing field among all providers, as well as protect their current revenue streams. The ultimate resolution must incorporate a forward-looking view of increasing use of IP-enabled services, rather than dwell in the past with outdated categorizations of telephony services and providers. Additionally, the Board would urge the FCC to proceed cautiously in reaching a determination on this issue with respect to measures that would increase existing charges (i.e. subscriber line charge) to customers nationwide, who will likely complain to and attempt to seek relief from their local state utility commissions.

E. Universal Service

The NPRM seeks comment on the universal service obligations and entitlements of both facilities-based and non-facilities-based providers of IP-enabled services, and how the regulatory classification of IP-enabled services would affect the FCC's ability to fund universal service. The issues present in the dialogue surrounding the imposition of universal service obligations upon IP-enabled service providers are similar to those discussed above regarding intercarrier compensation. Universal service has embodied the FCC's historical commitment to establishing policies to provide access to telecommunications service to all Americans, and has been expanded from programs to support telephone service for low-income consumers and service in high-cost areas to include support for telephony and Internet access for schools and libraries and rural healthcare. The FCC correctly recognizes that many IP-enabled services are those which have traditionally been supported by universal service funding.[10] We agree with the FCC's acknowledgement that this NPRM will provide a record to permit the FCC to reexamine its universal service policies and set policies that will continue to provide the necessary support for universal service, while availing ourselves of the benefits provided by widespread deployment of IP-enabled services.

[10] NPRM at ¶ 66.

F. Numbering Resources

The Board commends the FCC for requesting comment in its NPRM on the impact of IP-enabled services on numbering resources.[11] With New Jersey being the most densely populated state in the nation, the conservation of our numbering resources has remained a high priority for this Board. The Board has worked fastidiously to conserve our state's area codes, and used all resources available to us, including the monitoring of number pools, number utilization, inventories and available reserves, as well as conducting compliance reviews with the Board's Orders on number resource utilization and reclamation as needed. As a result, the projections for some of our area codes that were expected to be exhausted by 2003 have been pushed back to 2009. These results are consistent with the FCC's findings in its recent report on telephone number utilization that indicated efforts such as those used by the Board have saved more than 92 million telephone numbers through year-end 2003.[12]

The Board is concerned that the ability of VoIP providers to issue numbers from any geographic area could deter number conservation efforts. It could prove to be highly problematic in the larger geographic areas where numbers are in higher demand. Thus, the Board would urge the FCC to consider sufficient limits against self-selection of area codes, along with input from the state utility commissions. While the Board recognizes that technology is changing such that consumers may, at some time in the future, be able to use the same number for their wireless and wireline phones, thus also

[11] NPRM at ¶ 76.
[12] *Numbering Resource Utilization in the United States as of December 31, 2003*, Federal Communications Commission, Wireline Competition Bureau, Industry Analysis and Technology Division, at 2. (May 2004).

conserving phone numbers, pending those technological developments, the Board urges the FCC to continue to monitor the efficient use of numbering resources.

IV. Conclusion

The Board looks forward to the FCC's review and examination of the data received from the industry which is sought in the NPRM, which should provide sufficient data for the FCC to resolve these important and pressing issues. While we are optimistic about the future technological developments and new services that the rapid development of IP-enabled services will bring to all consumers, we are equally concerned that any future regulatory policy resulting from the FCC's review should be pro-consumer, in order that the benefits of this new competitive marketplace are shared by all.

Respectfully submitted,

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